
Emergency Rules

Title 15—ELECTED OFFICIALS Division 30—Secretary of State Chapter 10—Voting Machines (Electronic)

EMERGENCY RULE

15 CSR 30-10.160 Electronic Ballot Tabulation—Election Procedures (Precinct Counters and DREs)

PURPOSE: This rule provides procedures to be used by election authorities using Optical Scan Precinct Count voting systems (Precinct Counters) and Direct Recording Electronic voting systems (DREs) for securing and tabulating election results at the central location.

EMERGENCY STATEMENT: The Help America Vote Act (HAVA) of 2002, requires each state to enact laws to improve election administration, to provide accessible voting stations and to provide notice to a voter who has overvoted and an opportunity to correct their ballot. As part of the Elections Division program for compliance with HAVA and the equipment procurement process, the secretary of state (SOS) reviewed existing rules regarding use of electronic voting systems. This review revealed that the current rules did not include any specific procedures for testing and use of DREs and Precinct Counters. As the local jurisdictions are in the process of implementing their HAVA compliant voting systems, it has become apparent that all jurisdictions will be using DREs for the first time and the vast majority of voters in the state of Missouri will be using Precinct Counters, many of them for the first time. The increased numbers of voters and jurisdictions using DREs and Precinct Counters makes uniform procedures for their testing and use crucial to the improvement of election administration. As the first election in 2006 approaches that involves all local election authorities using DREs and Precinct Counters, many for the first time (August 8, 2006), there is a compelling governmental interest for uniform procedures for their testing and use.

The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Office of the Secretary of State believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed June 21, 2006, effective July 1, 2006, expires February 22, 2007.

(1) Each unit or case shall only be opened in the presence of a bipartisan team which shall verify the accuracy of the seal number before the seal is broken.

(2) The election authority shall be responsible for ensuring that sufficient certificates or log entries are made on each transfer of DREs, Precinct Counters, memory components, paper cast vote records and ballots to accurately recreate each movement of the DRE, Precinct Counter, memory components, paper cast vote records and ballots. Each transfer shall include a statement that no election material was added, subtracted or altered except as provided by statute or rule and that no irregularities were noticed unless otherwise noted.

(3) The election authority or his/her representative shall be on hand at all times in the counting center when the ballots, paper cast vote records and memory components are unsealed. The units and containers shall be unsealed in the presence of bipartisan teams which shall verify that the seal is intact, and verify the seal number where numbered seals are used, before the seal is broken. When sealing and unsealing the containers, the members of the bipartisan teams shall verify the seal numbers by their signatures on a log sheet designed for that purpose.

(4) The tabulation and consolidation shall be performed in public. The election authority may make reasonable rules and regulations for conduct at the tabulating center, including limiting access to the tabulation area, to ensure the security of the results and the returns and to avoid interference with the tabulating center personnel.

(5) Upon receiving the DREs, Precinct Counters, memory components, paper cast vote records and ballots, the election authority shall verify that the seals are intact and verify the seal number where numbered seals are used, and that there is no evidence of tampering with the units, the cases, the containers or their contents.

(6) Following acceptable procedures appropriate for the make, model, and version of the DRE or Precinct Counter in use, the election authority or his/her designee shall transfer the vote totals from the memory components into the election management system for official tabulation and consolidation.

(7) Prior to certification of the election results, the accuracy certification team(s) shall tabulate the same set of votes used in the pre-election internal logic and accuracy test performed pursuant to 15 CSR 30-10.140(6)(C) on each memory component used at the polling locations to tabulate votes on DREs and precinct counters.

(A) If the results are not identical to those produced in the pre-election test for any memory component, the team shall not certify that the unit in which that component was used was operating properly.

1. In the case of a precinct counter, the necessary corrections shall be made to the program until the results are identical and the ballots cast on the precinct counter in which the memory component was used shall be retabulated and the consolidated results corrected accordingly.

2. In the case of a DRE, the paper cast vote records produced by the unit in which the memory component was used shall be hand counted and the consolidated results corrected accordingly.

(B) If the results are identical, the team shall certify that the unit was operating properly.

(8) The paper cast vote records and ballots shall be kept secured until they must be unsealed to be hand counted in the post-election verification of electronic results pursuant to 15 CSR 30-10.110 or until they must be unsealed to be hand counted when a manual recount of votes is ordered. They shall only be unsealed in the presence of bipartisan teams which shall verify that the seal is intact before the seal is broken and which shall reseal the containers in such a manner that if the container is opened, the seal will be broken beyond repair after the post-election audit or the manual recount is complete. When sealing and unsealing the containers, the members of the bipartisan teams shall verify the seal numbers by their signatures on a log sheet designed for that purpose.

AUTHORITY: section 115.225, RSMo Supp. 2005. Emergency rule filed June 21, 2006, effective July 1, 2006, expires Feb. 22, 2007. An emergency rule and proposed rule covering this same material will be published in the August 1, 2006 issue of the Missouri Register.